

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARLIN M. ADAMS, Chapter 11 Trustee of
the Post-Confirmation Bankruptcy Estates of
CORAM HEALTHCARE CORPORATION,
a Delaware Corporation, and of CORAM
INC., a Delaware Corporation,

Plaintiffs,

v.

DANIEL D. CROWLEY, DONALD J.
AMARAL, WILLIAM J. CASEY, L. PETER
SMITH, and SANDRA L. SMOLEY,

Defendants.

Case No. 04-1565 (SLR)

**APPENDIX OF DOCUMENTS IN SUPPORT OF DANIEL
CROWLEY'S REPLY BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

May 15, 2007

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TABLE OF CONTENTS

<u>Document Description</u>	<u>Page</u>
Excerpts of deposition of David M. Friedman taken on March 16, 2007	C1
Excerpts of deposition of Christina Morrison taken on March 26, 2007	C5

Friedman, David M.

3/16/2007

Page 1	Page 2
<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>-----X</p> <p>ARLIN M. ADAMS, Chapter 11 Trustee of the Post-Confirmation Bankruptcy Estates of CORAM HEALTHCARE CORPORATION, a Delaware Corporation, and of CORAM INC., a Delaware Corporation, Plaintiff,</p> <p>vs. No. 04-1565 (SLR)</p> <p>DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J. CASEY, L. PETER SMITH, and SANDRA L. SMOLEY, Defendants.</p> <p>-----X</p> <p>VIDEOTAPED DEPOSITION OF DAVID M. FRIEDMAN New York, New York Friday, March 16, 2007</p> <p>Reported by: Jennifer Ocampo-Guzman, RPR, CRR</p>	<p>1</p> <p>2</p> <p>3 March 16, 2007</p> <p>4 9:31 a.m.</p> <p>5</p> <p>6 Deposition of DAVID M. FRIEDMAN,</p> <p>7 held at the offices of Kasowitz, Benson,</p> <p>8 Torres & Friedman, LLP, 1633 Broadway,</p> <p>9 New York, New York, pursuant to subpoena,</p> <p>10 before Jennifer Ocampo-Guzman, a</p> <p>11 Registered Professional Reporter,</p> <p>12 Certified Real-Time Shorthand Reporter</p> <p>13 and a Notary Public of the State of New</p> <p>14 York.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 4
<p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 SCHNADER HARRISON SEGAL & LEWIS LLP</p> <p>4 Attorneys for Plaintiffs</p> <p>5 1600 Market Street, Suite 3600</p> <p>6 Philadelphia, Pennsylvania 19103</p> <p>7 BY: BARRY E. BRESSLER, ESQ.</p> <p>8 bbressler@schnader.com</p> <p>9 RICHARD A. BARKASY, ESQ.</p> <p>10 220 Lake Drive East, Suite 200</p> <p>11 Cherry Hill, New Jersey 08002-1165</p> <p>12 rbarkasy@schnader.com</p> <p>13 KEKER & VAN NEST, LLP</p> <p>14 Attorneys for Defendant</p> <p>15 710 Sansome Street</p> <p>16 San Francisco, California 94111</p> <p>17 BY: R. JAMES SLAUGHTER, ESQ.</p> <p>18 rslaughter@kvn.com</p> <p>19 KASOWITZ, BENSON, TORRES & FRIEDMAN</p> <p>20 Attorneys for the Deponent</p> <p>21 1633 Broadway</p> <p>22 New York, New York 10019</p> <p>23 BY: ROBERT M. NOVICK, ESQ.</p> <p>24 rnovick@kasowitz.com</p> <p>25 ALSO PRESENT: JOSE RIJO, Videographer</p>	<p>1</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins the</p> <p>4 videotaped deposition of David Friedman,</p> <p>5 tape 1, volume I, in the matter of Adams</p> <p>6 versus Crowley in the United States</p> <p>7 District Court of the District of</p> <p>8 Delaware, case number 04-1565. Today is</p> <p>9 March 16, 2007 and the time on the video</p> <p>10 monitor is 9:31 a.m.</p> <p>11 The video operator today is Jose</p> <p>12 Rijo representing LiveNote World</p> <p>13 Services located at 221 Main Street,</p> <p>14 suite 1250, San Francisco, California</p> <p>15 94105, phone number (415) 321-2300.</p> <p>16 The court reporter is Jennifer</p> <p>17 Ocampo of David Feldman Worldwide</p> <p>18 reporting on behalf of LiveNote world</p> <p>19 Services.</p> <p>20 Today's deposition is being taken</p> <p>21 on behalf of defendant and is taking</p> <p>22 place at 1633 Broadway, New York, New</p> <p>23 York.</p> <p>24 will counsel please introduce</p> <p>25 themselves and whom they represent.</p> <p>MR. NOVICK: This is James</p>

Pages 1 to 4

Page 125

1 FRIEDMAN

2 A. Yes.

3 Q. Would you look under, on page 25,
4 at the heading number 3, "The Business
5 Relationship Between Mr. Crowley and
6 Cerberus."

7 A. Yes.

8 Q. And the second paragraph there
9 says, "Mr. Crowley and Cerberus are parties
10 to an agreement pursuant to which Mr. Crowley
11 receives a fee of \$80,000 per month with a
12 potential for additional incentive bonuses
13 for services provided to Cerberus with
14 respect to its investments in companies other
15 than the Debtors. Mr. Crowley neither
16 receives a fee nor earns incentive bonuses
17 from Cerberus for any services he provides
18 respecting the Debtors." Do you see that?

19 A. Yes.

20 Q. Is that accurate as far as you knew
21 the facts at the time you submitted the
22 second disclosure statement?

23 A. I believe so.

24 Q. Now, at the time -- at the time
25 that the second disclosure statement was

Page 126

1 FRIEDMAN

2 submitted, which I think was the end of
3 July 2001, the fact that Mr. Crowley was
4 earning a fee from Cerberus was no secret?

5 A. That's correct.

6 Q. In fact it was the -- all of the
7 interested parties, whether it be Coram, note
8 holders, equity holders were -- were well
9 aware of that fact by the time the second
10 disclosure statement was prepared; isn't that
11 right?

12 A. When you say all equity holders,
13 the ones that we were represented by Mr. Levy
14 were aware, yes, as well as other creditors.

15 Q. The equity committee?

16 A. The equity committee was certainly
17 aware, yes.

18 Q. And turning your attention to page
19 26, the paragraph beginning, "Although..."

20 "Although the CHC board of
21 directors" -- I think "CHC" there refers to
22 Coram Healthcare Corporation?

23 A. Yes.

24 Q. "Although the CHC board of
25 directors had been aware of a business

Page 127

1 FRIEDMAN

2 relationship between Mr. Crowley and
3 Cerberus, the Court found that there was
4 inadequate disclosure of the extent and
5 details of the relationship, and that it
6 could not make a finding that the Original
7 Plan was proposed in good faith in accordance
8 with section 1129(a)(3) of the Bankruptcy
9 Code based upon the evidence in the record at
10 the time."

11 Do you see that?

12 A. Yes.

13 Q. That concern of the bankruptcy
14 court that caused it to deny the first plan
15 was absent with respect to the second plan;
16 is that right?

17 A. The disclosure issue was certainly
18 not an issue in the second plan, I agree.

19 Q. Nevertheless, the second plan was
20 rejected as well?

21 A. It was not confirmed by the Court,
22 correct.

23 Q. What was your reaction when the
24 plan was not confirmed by the court?

25 A. I was very surprised.

Page 128

1 FRIEDMAN

2 Q. More surprised than when the first
3 plan was not confirmed?

4 A. I was surprised the first time, and
5 even more surprised the second time.

6 Q. Why were you even more surprised
7 that the second plan was not confirmed?

8 A. I thought that the path that we had
9 embarked upon beginning in January or
10 February of 2001, which had in essence the
11 plan of retaining the Goldin firm and being
12 guided by those independent recommendations
13 was one which was endorsed by the Court both
14 in terms of having approved the Goldin
15 retention, as well as -- and other actions
16 the Court had taken during the course of
17 2001, such as the continued approval of
18 Coram's exclusivity with respect to filing a
19 plan, which had been opposed by the equity
20 committee on at least one and perhaps
21 numerous occasions.

22 Mr. Levy had also, I believe,
23 during the course of 2001 sought the right to
24 bring litigation on behalf of the estate
25 against Mr. Crowley, and I think that that

Page 129

1 FRIEDMAN
2 was opposed by Coram on the basis of
3 Mr. Goldin's ongoing efforts, both to
4 investigate the circumstances and to propose
5 a recommended settlement, if you will, under
6 the plan.
7 So we thought -- and the Court
8 denied his request to bring that litigation,
9 and I think there were other steps along the
10 way that led us to think that we were on the
11 right path in terms of curing the defects
12 that the Court found to have been present the
13 first time around.
14 And so when the Court indicated
15 that it wouldn't confirm a second plan, I was
16 very surprised. I also was surprised that
17 the Court's basis for not confirming the
18 second plan was the ongoing retention of
19 Crowley by Coram while he simultaneously
20 worked for Cerberus, and that surprised me
21 that the Court found that to be a problem
22 because it was I believe well-known to
23 everybody during the course of 2001, that Mr.
24 Crowley was continuing to work for Coram,
25 because operationally that was in the best

Page 130

1 FRIEDMAN
2 interest of the company. And I think it was
3 no secret that he had not terminated his
4 relationship with Cerberus, and if that were
5 a gated of the type that the bankruptcy court
6 considered to be one that would preclude
7 confirmation, we thought we would have
8 learned of it much earlier in the year, as
9 opposed to finding it out for the first time
10 at the confirmation decision.
11 Q. Let me unpack some of that answer,
12 because there was a lot there, Mr. Friedman.
13 Part of your reason that you say
14 you were surprised was because you thought
15 essentially, in broad strokes, that the Court
16 had endorsed the plan that you had embarked
17 upon in terms of hiring Goldin?
18 A. Certainly the Court endorsed the
19 hiring of Goldin. I think the Court
20 considered the Goldin process to be one that
21 presented the promise of a successful
22 reorganization.
23 Q. Another point that you made was the
24 extension of the exclusivity period?
25 A. Yes.

Page 131

1 FRIEDMAN
2 Q. Describe for me the significance of
3 the extension of the exclusivity period.
4 A. I think in bankruptcy cases,
5 exclusivity is sort of the litmus test by
6 which one gauges whether a company is on the
7 right tract. Courts generally -- well, in
8 case you don't -- I don't know how much you
9 know about bankruptcy, but debtors typically
10 automatically have exclusivity for the first
11 120 days of the case, and then that period
12 can be extended for cause.
13 And the typical basis for cause to
14 extend exclusivity is that the debtors are
15 making appropriate progress towards a
16 reorganization based upon the complexity of
17 the case and the bona fides of the debtors'
18 efforts and so on.
19 And so when exclusivity is -- when
20 we sought to extend exclusivity in 2001 and
21 it was opposed by Mr. Levy, and this was
22 happening concurrently with the Goldin
23 retention, it seemed like that would have
24 been the appropriate time for the Court to
25 have said either you can keep exclusivity

Page 132

1 FRIEDMAN
2 because you are doing the right thing, or I
3 am going to lift exclusivity because you are
4 doing the wrong thing.
5 Now the Court elected to continue
6 exclusivity. In that context, I think we all
7 took some comfort that we were on the right
8 path.
9 Q. Not only did you seek to extend
10 exclusivity, but the equity committee sought
11 to end exclusivity and gain permission to
12 file its own proposed plan; is that right?
13 A. That's my recollection, yes.
14 Q. And do you recall if they did that
15 on more than one occasion?
16 A. I think they did it on more than
17 one occasion, yes.
18 Q. And what was -- do you think they
19 did it on more than two occasions?
20 A. My guess would be that they did it --
21 I know they did it once. My guess is that
22 they did it twice.
23 Q. And what was the Court's response
24 to the equity committee's request that it be
25 permitted to propose a plan?

Pages 129 to 132

Friedman, David M.

3/16/2007

Page 201

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25 REASON: _____

Page 202

1
2 C E R T I F I C A T E
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NEW YORK)
6 I, JENNIFER OCAMPO-GUZMAN, a
7 Shorthand Reporter and Notary Public within
8 and for the State of New York, do hereby
9 certify:
10 That DAVID M. FRIEDMAN, the witness
11 whose deposition is hereinbefore set forth,
12 was solemnly, sincerely affirmed and that
13 such deposition is a true record of the
14 testimony of such witness.
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 16th day of March 2007.
21
22
23 JENNIFER OCAMPO-GUZMAN
24
25

Page 203

I N D E X	
WITNESS	PAGE
DAVID M. FRIEDMAN	5
BY: MR. SLAUGHTER	187
BY: MR. BRESSLER	
E X H I B I T S	
DESCRIPTION	PAGE
Friedman 1, Printout from Kasowitz, Benson, Torres & Friedman website.....	11
Friedman 2, Letter dated 2/28/00, Bates Nos. CROWLEY107 through CROWLEY110.....	18
Friedman 3, Document entitled, "David Friedman Interview (5/17/01)," Bates Nos. G 8667 through G 8676.....	24
Friedman 4, Minutes of a Meeting of the Board of Directors of Coram Healthcare Corporation, April 5, 2000, Bates Nos. TRUSTEE009454 through TRUSTEE009462.....	26
Friedman 5, Minutes of a Meeting of the Board of Directors of Coram Healthcare Corporation, August 7, 2000, Bates Nos. TRUSTEE009481 through TRUSTEE009484.....	42
Friedman 6, Letter dated 6/1/00.....	72
Friedman 7, Letter dated 6/7/00.....	72
Friedman 8, Schedule 13D.....	73
Friedman 9, Minutes of a Telephonic Meeting of the Board of Directors of Coram Healthcare Corporation, December 28, 2000, Bates Nos. TRUSTEE009502 through TRUSTEE009507.....	90

Page 204

EXHIBITS (Continued):	
DESCRIPTION	PAGE
Friedman 10, Motion for Order Appointing Goldin Associates, L.L.C. as Independent Restructuring Advisors.....	97
Friedman 11, Draft Minutes of a Meeting of the Board of Directors of Coram Healthcare Corporation, July 12, 2001.....	108
Friedman 12, Letter dated 7/5/01, Bates Nos. COR-EQTY 009385 through COR-EQTY 009387.....	117
Friedman 13, Second Joint Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code.....	123
Friedman 14, Minutes of a Meeting of the Board of Directors of Coram Healthcare Corporation, December 27, 2001, Bates Nos. TRUSTEE009565 through TRUSTEE009567.....	139
Friedman 15, Motion for Leave to File Adversary Proceeding.....	144
Friedman 16, Debtors' Objection to Equity Committee's Motion for Leave to File Adversary Proceeding.....	147
Friedman 17, Amended Final Application of Kasowitz, Benson, Torres & Friedman LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 8, 2000 through December 31, 2002.....	179
Friedman 18, Draft letter dated 5/6/02, Bates Nos. CRX 00063 through CRX 00065...	195

Pages 201 to 204

Morrison, Christina
CONFIDENTIAL

3/26/2007

Page 1	Page 2
<p>CONFIDENTIAL IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>ARLIN M. ADAMS, Chapter 11 : Trustee of the : Post-Confirmation Bankruptcy : Estates of CORAM HEALTHCARE : CORPORATION, a Delaware : Corporation and of CORAM, : INC., a Delaware Corporation, : Plaintiff : CASE NO. vs. : 04-1565</p> <p>DANIEL D. CROWLEY; DONALD J. : AMARAL; WILLIAM J. CASEY; : L. PETER SMITH; AND SANDRA L. : SMOLEY, : Defendants :</p> <p>Monday, March 26, 2007 9:46 a.m.</p> <p>Videotaped deposition of CHRISTINA MORRISON, held at the law offices of Ballard Spahr Andrews & Ingersoll, LLP, 1735 Market Street, 51st Floor, Philadelphia, Pennsylvania, 19103, pursuant to notice before Cynthia A. Whyte, Registered Professional Reporter and Notary Public.</p>	<p>1 A P P E A R A N C E S: 2 SCHNADER HARRISON SEGAL & LEWIS LLP 3 Counsel for Plaintiff Arlin Adams, Trustee 1600 Market Street Suite 3600 Philadelphia, PA 19103 (215) 751-2336 5 BY: WILBUR L. KIPNES, ESQ. wkipnes@schnader.com 7 8 KEKER & VAN NEST LLP 9 Counsel for Defendant Daniel Crowley 710 Sansome Street San Francisco, CA 94111-1704 (415) 391-5400 10 BY: WARREN A. BRAUNIG, ESQ. wbraunig@kvn.com 11 12 AND: ELLIOT R. PETERS, ESQ. epeters@kvn.com 13 14 DEUTSCHE BANK 15 Counsel for Witness Christina Morrison Deutsche Bank AG New York Legal Department 60 Wall Street New York, NY 10005-2858 (212) 250-7332 16 17 BY: CHARLIE GAMBINO, ESQ. charlie.gambino@db.com 18 19 ALSO PRESENT: VINCENZO PETULLA, 20 Videographer 21 22 23 24 25</p>
Page 3	Page 4
<p>1 IT IS HEREBY STIPULATED AND 2 AGREED by and among counsel for the 3 respective parties hereto that the 4 filing, sealing and certification of the 5 within deposition shall be and the same 6 are hereby waived.</p> <p>7 IT IS FURTHER STIPULATED 8 AND AGREED that all objections, 9 except as to the form of the 10 question, shall be reserved to the 11 time of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND 13 AGREED that the within deposition may be 14 signed before any Notary Public with the 15 same force and effect as if signed and 16 sworn to before the Court. 17 18 19 20 21 22 23 24 25</p>	<p>1 I N D E X 2 WITNESS: PAGE 3 CHRISTINA MORRISON 4 By Mr. Braunig 7, 181 5 By Mr. Kipnes 136 6 MORRISON EXHIBITS 7 NO. DESCRIPTION PAGE 8 Exhibit 1 Memo, 6/5/01, to List from Ms. Gould 25 9 10 Exhibit 2 Letter, 1/16/99, to Mr. Smith from Ms. Morrison 29 11 12 Exhibit 3 Excerpt of Transcript, 10/26/01 39 13 Exhibit 4 Letter, 7/12/99, to Mr. Kahn from Mr. Crowley 43 14 Exhibit 5 Memo, 9/20/99, to Mr. Meffe and Ms. Kopta from Ms. Morrison and Mr. Guthner 54 16 17 Exhibit 6 Offering Memorandum 62 18 19 Exhibit 7 "Project Caddy, Confidentiality Agreements Proposal Packets Distributed December 1999" 71 20 21 Exhibit 8 Second round bid letters 74 22 Exhibit 9 "Buyer Due Diligence Questions 1-31-00.doc 82 23 24 Exhibit 10 Minutes, 2/10/00 84 25</p>

Pages 1 to 4

CONFIDENTIAL

Page 125

1 This was the process we were hired to
2 undertake and that was the process we
3 undertook.
4 Q. But you did your very best to help
5 them get the best deal they could get,
6 correct?
7 A. We -- yeah; we went through every
8 part of the process, as we were requested to
9 do so, and rendered a fairness opinion.
10 Q. And your opinion, the opinion of
11 Deutsche Bank, when the entire process was
12 reviewed and you went through the financial
13 terms and you went through the procedural
14 elements associated with this transaction, did
15 you have any -- did you have any doubt that
16 this transaction was fair?
17 MR. KIPNES: Object to the form
18 of the question.
19 A. We rendered a fairness opinion, so
20 felt between the fairness and committee and
21 the review with the board that this was a fair
22 transaction.
23 Q. Did you have any doubt that this
24 transaction was fair?
25 MR. KIPNES: Object to the form

Page 127

1 for identification.)
2 Q. There is a -- why don't you read the
3 first paragraph, please. This is Morrison 19.
4 Does this refresh your recollection
5 as to -- this is the minutes of a telephonic
6 meeting of the board of directors of Coram
7 Healthcare Corporation dated June 9, 2000.
8 Does this refresh your recollection
9 as to who the participants were on this call?
10 A. I don't recall that I was introduced
11 to everybody that was on the call, so all I
12 know is from what is on this document.
13 Q. And did you -- what did you -- what
14 was the discussion that was had about the
15 presentation that you made?
16 A. I went through the fairness opinion
17 documents and stated that Deutsche Bank was
18 prepared to render a fairness opinion as to
19 the transaction.
20 Q. Did they ask questions about the
21 fairness opinion?
22 A. I don't recall anything specific.
23 Q. Do you recall if there was
24 discussion among the board of directors about
25 the transaction?

Page 126

1 of the question.
2 A. Did I have any? No.
3 MR. BRAUNIG: Why don't we take
4 a break for lunch right now and we can
5 reconvene. It is 12:46 right now.
6 VIDEO TECHNICIAN: We are now
7 off the record at 12:44.
8 (Luncheon recess.)
9 VIDEO TECHNICIAN: We are now
10 on the record at 1:22.
11 BY MR. BRAUNIG:
12 Q. Let's return to the June 9
13 presentation in the fairness opinion that
14 Deutsche Bank created.
15 You said that you presented this to
16 Coram's board of directors?
17 A. Yes.
18 Q. And this was over the phone?
19 A. Correct.
20 Q. Do you recall who was on the phone
21 at the time?
22 A. I don't.
23 MR. BRAUNIG: Why don't we go
24 ahead and mark Exhibit 19, Morrison 19.
25 (Morrison Exhibit 19 was marked

Page 128

1 A. I do not recall.
2 Q. Were you on the call when the board
3 of directors decided whether or not to approve
4 the transaction?
5 A. I don't recall if I was or not.
6 Q. Do you know whether the board
7 ultimately approved the transaction?
8 A. Yes, they did.
9 Q. Do you know whether that approval
10 was unanimous?
11 A. I don't know.
12 Q. Did you do any additional work for
13 Coram after June 9, 2000?
14 A. Dan called and asked if I would be
15 interested in talking to them about some
16 potential financing alternatives, which I did
17 in sort of the context of a pitch to see if
18 there was anything additional that could --
19 any additional work that could be done. So it
20 wasn't -- I wasn't hired to do anything. It
21 was really in the context of a pitch, an
22 investigation.
23 Q. Did Dan tell you why he was
24 interested in this pitch, in this sort of
25 early stage investigation?

Pages 125 to 128

Morrison, Christina
CONFIDENTIAL

3/26/2007

Page 185	Page 186
<p>1 I have read the foregoing</p> <p>2 transcript of my deposition given on</p> <p>3 Monday, March 26, 2007, and it is true,</p> <p>4 correct and complete to the best of my</p> <p>5 knowledge, recollection and belief except</p> <p>6 for the corrections noted hereon and/or</p> <p>7 the list of corrections, if any, attached</p> <p>8 on a separate sheet herewith.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 CHRISTINA MORRISON</p> <p>15</p> <p>16</p> <p>17 Subscribed and sworn before</p> <p>18 me this ____ day of _____, 2007</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CERTIFICATE</p> <p>2 I HEREBY CERTIFY that the</p> <p>3 proceedings, evidence and objections are</p> <p>4 contained fully and accurately in the</p> <p>5 stenographic notes taken by me on Monday,</p> <p>6 March 26, 2007, and that this is a true and</p> <p>7 correct transcript of same.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 Cynthia A. Whyte, RPR</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification of</p> <p>18 this transcript does not apply to any</p> <p>19 reproduction of the same by any means,</p> <p>20 unless under the direct control and/or</p> <p>21 supervision of the certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
SLIP SHEET	

Pages 185 to 186